Supreme Court of the United States

Sitting in Equity.

No. 20 Original.

October Term, 1920.

THE COMMONWEALTH OF PENNSYLVANIA
Complainant.

vs:

THE STATE OF WEST VIRGINIA
Defendant.

No. 21, Original.

October Term, 1920.

THE STATE OF OHIO, *Complainant,*

vs:

THE STATE OF WEST VIRGINIA, *Defendant.*

BRIEF FOR DEFENDANT IN SUPPORT OF MOTIONS OF DEFENDANT TO SET DOWN CAUSE FOR FINAL HEARING AND ARGUMENT, AND FOR OTHER DIRECTIONS.

I.

TIME OF HEARING AND ARGUMENT.

The evidence has been taken, and substantially all of it, with the exception of the exhibits, has been printed. The printing of all the evidence, including the exhibits, will soon have been completed.

The statute in controversy (West Virginia Acts of 1919, Ch. 71), printed as an exhibit with the answer, was enacted by the State of West Virginia as a remedial measure imperatively required, in order to secure a reasonably adequate natural gas service at the hands of persons, firms and corporations engaged in furnishing, or required by law to furnish, natural gas for public use within the State. Pending these suits, and for two years, the defendant has been enjoined from enforcing this statute against any party or corporation engaged in transporting natural gas from West Virginia into Pennsylvania or Ohio or for delivery into Pennsylvania or Ohio. The defendant, believing that these suits could best and most effectively be determined upon lnal hearing, made no motion to dissolve the preliminary injunctions. But with a view of speeding the causes, the defendant, in April, 1920, in the hope that a final hearing might be had early in the October Term, 1920, moved the Court to fix the times for the taking and conclusion of the evidence. By order entered on April 19, 1920, May 1, 1921, was fixed as the ultimate date for the conclusion of the evidence.

Pennsylvania v. West Virginia, 252 U. S. 563.
Ohio v. West Virginia, Id.

Assuming the statute to be valid, the chief public service natural gas corporations amenable thereto, while

transporting under the protection of the injunctions enormous quantities of gas to or into Pennsylvania and Ohio, or for consumption therein, have been and are enabled to defeat the purpose and operation of the statute, and to deprive the public of West Virginia of the reasonably adequate gas service which the statute was intended to secure.

That the supply of West Virginia gas is diminishing from year to year is, it is believed, undisputed in the record. The consequence of the constant transportation of such diminishing gas supply out of West Virginia, under the protection of the injunctions, is and will be to aggravate the inadequacy of service within West Virginia, with its resulting hardship and expense to the public thereof. And from the exhaustible character and diminishing volume of the gas, it follows that the very lapse of time, during which the enforcement of the statute is frustrated, tends to defeat the operation of the statute, if valid.

With the approach of the winter of 1921-1922 it is important to the gas consumers of West Virginia to know at the earliest practicable time whether the enforcement of the statute can be relied on, or whether it will be necessary to make readjustments with a view to the consumption of other fuel, because of the non-enforcement of the statute.

It is believed, therefore, that the character of the parties, the nature of the controversy, the results of the non-enforcement of the statute, and the ample time remaining before the commencement of the October Term, 1921, fairly warrant the defendant in asking a hearing of the causes at the earliest day in that term that the Court may deem practicable.

II.

HEARING OF CAUSES TOGETHER

When it heretofore moved for consolidation of the two causes, the defendant said in its supporting brief:

> "As the two cases involve the validity of the same statute of West Virginia, attacked on similar grounds; the bills of complaint filed contemporaneously make substantially the same allegations, with few exceptions not very material; the answers, while in parts varied to conform to the verbiage of the respective bills, are substantially similar, and, in those parts affirmatively justifying the statute and its enactment, are identical; like and contemporaneous procedure has marked the previous course of the cases; most of the material evidence will be the same in both cases; and, no doubt, the cases will be heard finally and disposed of together,—the defendant believes that a typical situation for consolidation, as contemplated by the Act of Congress and the equity practice, is presented. *Rev. Stat. U. S.*, sec 921; 3 *U. S. Comp. Stat.*, sec. 1547; *Mutual L. Ins. Co. v. Hillmon*, 145 U. S. 285, 293; *U. S. v. Union Pac. R. Co.*, 98 U. S. 569; *Baltimore & O. S. W. R. Co. v. U. S.* 220 U. S. 94, 106; 2 *Foster Fed. Prac.* (5 Ed.) sec. 472; *Lant v. Kinne*, 75 Fed 636."

By the order of April 19, 1920, while the motion was not granted to its full extent, the causes were consolidated for the purpose of taking proofs.

The subsequent development of the cases has fully justified the quoted statement and the order of the Court. The course and nature of the proofs show that the two causes are one. It would hardly be practicable to argue the Pennsylvania Case without reference to conditions in Ohio, or the Ohio Case without adverting to the situation in Pennsylvania.

It is believed, therefore, that the ends of justice would

best be attained by the hearing and argument of the two causes at the same time.

If the Court should not think fit to order the two cases to be heard together, the reasons above urged, as well practical considerations relating to the enforcement of the statute, indicate the propriety of the hearing of the two causes in immediate sequence or as nearly contemporaneously as practicable.

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